



Excise Tax Advisory

Excise Tax Advisories (ETAs) are interpretive statements issued by the Department of Revenue under authority of RCW 34.05.230. ETAs explain the Department's policy regarding how tax law applies to a specific issue or specific set of facts. They are advisory for taxpayers; however, the Department is bound by these advisories until superseded by Court action, Legislative action, rule adoption, or an amendment to or cancellation of the ETA.

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Withdrawal of Published Determination

Excise Tax Advisory 2011.32 (ETA 2011) explains that the Department of Revenue (Department) publishes certain written opinions issued by its Appeals Division. These determinations, called Washington Tax Decisions or WTDs, are published in accordance with RCW 82.32.410 and are available on the Department's Internet website.

This advisory is the third supplement to ETA 2011 and announces the withdrawal of an additional WTD. Readers should refer to ETA 2011 for an explanation of when the Department will announce the withdrawal of a WTD through an ETA or ETA supplement.

ETA 2011 and its supplements should not be discarded as these documents provide a history of all WTDs withdrawn by the Department through an ETA or ETA supplement.

The following WTD is withdrawn effective September 19, 2005:

Det. 04-0232, 24 WTD 230. The taxpayer in this determination manufactured products in a Foreign Trade Zone (FTZ) located in another state. From there, it sold and delivered products directly to its customers in Washington. The taxpayer protested imposition of wholesaling B&O tax on those sales, arguing that Washington's B&O tax on goods coming from an FTZ was preempted by the federal FTZ Act, prohibited by the Import-Export Clause of the United States Constitution, and also prohibited by the Department's own rule, WAC 458-20-193C. The Department ruled that neither the Foreign Trade Zone Act nor the Import-Export Clause preempted Washington's tax and that Rule 193C could not be interpreted to provide an exemption not provided by the United States Constitution.

The Department believes that Det. 04-0232 correctly found that the taxpayer in the determination was liable for B&O tax. However, the Department has decided that publication of the determination's discussion of the federal Import-Export Clause and Rule 193C was premature. In light of the questions raised during the rule-making process for Rule 193C on the legal justification of taxing imports and exports while they remain in transit, and the potential impact on Washington businesses, the Department has decided that it should wait for further clarification of the law before proceeding with action in this area. A case involving similar circumstances is pending before the West Virginia Supreme Court. The ultimate resolution of that case may provide additional guidance for the Department. Until further notice, the Department will continue to apply Rule 193C as currently written.

The Department will shortly issue an ETA to address the foreign trade zone issue as it applies to taxpayers who are similarly situated to the taxpayer in Det. 04-0232.
